

16 JUL 1981

DDA DEPT/STY

FILE: DM-2-1

MEMORANDUM FOR: Inspector General

FROM: Harry E. Fitzwater
Deputy Director for Administration

SUBJECT: Draft Report
Study of Agency Boards of Review

REFERENCE: Memo to DDA from IG, dated 19 June 1981,
same Subject

Copies of the draft study regarding the Agency's Boards of Review were forwarded to the Director of Logistics, the Director of Finance, and the Special Support Assistant to the DDA. While there do not appear to be any irreconcilable disagreements with the study, there are a number of comments which, if incorporated in the study, would provide clarification. The detailed comments provided by the Office of Logistics (tab A, keyed to IG report; tab B, IG recommendations and OL comments) and the Office of Finance are forwarded herewith for your consideration.

Harry E. Fitzwater

Harry E. Fitzwater

Attachments

Distribution:

- 0 - Adse w/atts
- 1 - DDA Subj w/atts
- 1 - DDA Chrono w/o atts
- 1 - HEF Chrono w/o atts
- 1 - EO Chrono w/o atts

EO/DDA :ba(15Ju181)

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Inspector General Study of Agency Boards of Review

FROM:

Director of Logistics

EXTENSION

NO.

OL 1 2622(a)

DATE

10 JUL 1981

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. EO/DDA
7D24 Hqs

10 JUL 1981

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81-1308/2

10 JUL 1981

MEMORANDUM FOR: Executive Officer, DDA

FROM: James H. McDonald
Director of Logistics

SUBJECT: Inspector General Study of Agency
Boards of Review

REFERENCE: Memo fm Inspector General to DDA,
dtd 19 Jun 81, Same subj. (IG-81-0382,
DD/A 81-1308, OL 1 2622)

1. Enclosed, as Attachment A, is the Office of Logistics' (OL) comments to the Inspector General's (IG) study. The comments are keyed to the IG report, and as the study is lengthy and somewhat diffused, thus is the response.

2. Attachment B lists each IG recommendation with OL's distilled reaction.



James H. McDonald

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Attachment:
A. Comments
B. Reactions

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OL 1 2622(a)

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The Office of Logistics is in general agreement with the report. However, from the viewpoint of those tasked with the adjudication of the sundry claims submitted by Agency employees, the Inspector General's (I.G.) Report has areas that tend to be incomplete and lack depth. There are areas that are based on questionable assumptions, are inconsistent, inaccurate, or miss the nuances, complexities, and problems of adjudicating claims uniformly and consistently against published criteria. Examples of each of the above follow:

Inconsistencies in the I.G. Study

Page 3 - "Goodwill flows from accepted procedures uniformly and consistently applied. Conversely, ill will flows from the reality or perception of ill-defined procedures irregularly and inconsistently applied."

Versus

Page 6 - "The more assertive employees, some board members argue, are willing to appeal to the highest level and more often than not get relief. Other employees, who are less aggressive by nature and who presume the system treated them fairly, do not appeal. Some perceive this as a double standard and charge that it is unhealthy. In a worst case scenario, two situations with identical facts could result in opposite decisions solely due to the personal nature of the claimants."

and

Page 14 - "The inspectors use the same regulations and procedures as the board in their investigation. The difference in conclusions--and the conclusions are not always different or in favor of the appellant--usually arises from the interpretation of the facts or new information developed in the course of the inspector's investigation."

OL Response

In fact, the board judges the case as presented by the claimant against the regulations and precedent, in communication with the Department of the Army and Department of State. When appealed, the I.G. goes beyond, to the extent of even looking into medical files, and thereby presents a recommendation, usually subjective, and often the conclusion is that the totality

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of the circumstances justifies ignoring the regulations. In the past, the board was not privy to the I.G. recommendation because the information was "Privileged." I.G. involvement thereby inherently applies viable criteria with the attendant perception by those looking only at results that procedures are irregularly and inconsistently applied. The chairman is of the opinion that the board's decisions should not be "grievable" just as personnel decisions are not "grievable." Both involve subjective judgments made by committees against published criteria.

Inaccuracies in the I.G. Study

Page 4 - "In addition to prescribing membership and dollar thresholds of approval, Agency regulations provide some general guidance as to the conduct of the boards. But specific guidance as to the processes through which the boards take action is unclear and limited."

OL Response

25X1 [] and AR 27-20, although guidelines, thus giving flexibility to the board, are specific, complete, and determinate. The I.G. should expand on why the regulations are unclear. On the contrary, they are all too clear, and they are limiting, and thereby opposed, and there is a tendency for involved personnel to repress and otherwise ignore them.

I.G. Study

Pages 10 and 11 - "The first step in structuring a claims system to Agency needs is to have a clear operating philosophy to guide the HCRB in its deliberations. This must be done at the DCI-DDCI level. Claims work often involves varying emotions and subjective judgments. Personal attitudes and lifestyle preferences sometimes clash, often subconsciously, with organizational goals. Lacking firm guidance and direction from top management, the philosophy of a board sometimes is established by a chairman or small group members. In other instances, the result is drift and uncertainty. Thus, we suggest that the DCI and DDCI, in consultation with senior advisors, establish in writing the operating philosophy of the HCRB. This should serve as the basis of the board's deliberations in initial claims adjudication and in appellate actions. In establishing an operating philosophy, the questions beginning on page 5 of Chapter 2 should be among those considered.

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"The next step is to identify those policy areas the Agency wishes to alter. These changes can be accomplished through revisions that will not make our system appreciably different than the military and will be generally consistent with Department of State policy. The current HCRB, rather than a special task force, is the logical choice for this in view of the members' experience, background, and familiarity with the claims process. We therefore suggest that the DDA task the HCRB to review [] and recommend appropriate revisions. We believe any revision of [] should:

"-- designate the board as the focal point for action on claims matters, with responsibility for reviewing and recommending policy changes, alerting senior management to existing or anticipated problems and advising senior management when an appellate ruling constitutes a change in policy. (This last point is discussed in more detail later in this chapter under the section entitled Appeal Process.) The board has shied away from doing so because it did not think it had the authority. Senior management, on the other hand, cannot resolve problems or questions of policy that are not brought to its attention.

"-- determine if the DDCI rather than the DCI should be the final authority on claims grievance cases.

"-- clarify as precisely as possible those terms used in claims work--incident to service, official duty, negligence, reasonable possession of property, and multiple claims--which are subject to varying interpretations.

"-- ensure that category limitations, the major element of a claims system, are realistic, in step with operational and organizational needs, and current. The claims review officer should advise the board when category limitations require change."

OL Response

The Chairman disagrees with most of these two pages. As noted above, AR 27-20 and [] contain specific guidance and direction.

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The middle of Page 11, of the I.G. Report (top of page 3 here), states that the Department of State is different than the military and the Agency. We do not agree. We generally operate against the same philosophy and procedures. As to the revision on the bottom of page 11 (middle of page 3 here), the Chairman disagrees that the board has shied away from changes because the board did not have the authority. The authority was always perceived as there; rationale to justify change is missing. Again, in the revisions the I.G. Report states concepts should be clarified; again, our perception is that [] and AR 27-20 precisely define the terms. The last revision, on page 12 (bottom of page 3 here), states that category limits be realistic. This is a subjective concept. What is reasonable, useful, and proper will vary with different people and perspectives. Staying in synchronization with the Department of the Army has the advantage on nailing down and thereby interjecting consistency to subjective concepts and ensuring consistency in potentially variable policy; although it is agreed that some deviations are now necessary to meet the Agency's unique circumstances.

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I.G. Study

Page 13 - "Appeals are reviewed essentially by the same people who judged the original claims, leading some to question whether the appellant can get a fair second hearing."

OL Response

[] covers appeals. The appeal is always presented to a level higher than the past adjudication. The appeal is not reviewed by essentially the same people who judge the original claim.

Incompleteness in the I.G. Study

Page 7 - "The Headquarters Claims Review Board (HCRB) processes and adjudicates claims against the U.S. Government for personal property that is lost, damaged, or destroyed during official or operational assignments.

"Authorities to settle claims are authorized under the Military Personnel and Civilian Employees Claims Act of 1964, as amended, and the Central Intelligence Agency Act of 1949, as amended. The pertinent CIA regulation is [] updated in January 1979, which sets forth the policy, responsibilities, and procedures for the processing, investigation, review, settlement, and appeal of personal property claims. This regulation relies

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heavily on the Department of the Army regulation AR 27-20 for general guidance in the settlement of claims."

OL Response

The Agency and the Department of State rely heavily on the Department of Army for a reason. Congress directed the Army to do that which the IG recommends on pages 4 and 5, i.e., publish philosophy, policy, procedures, and guidelines to adjudicate claims. Congress then encouraged all other entities to follow the Army's policies, although each entity could independently establish their own criteria. This Agency and the Department of State follow the Department of Army, closely, although each acts independently when so desired.

I.G. Study

Page 10 states, "The 1964 Claims Act, apart from requiring adherence to a few statutory limitations, permits civilian agencies to tailor their claims systems to suit their needs. OGC has ruled that the DCI has such authority and as noted above, the Agency has acted unilaterally on occasion. The Department of State follows a policy that suits its particular needs and raises category limitations independently."

OL Response

This implies that the Department of State actively changes categories, and we rarely change. In fact, State recently raised their category limits to agree with the Army guidelines. However, in the jewelry category, State increased the limit on "all jewelry" from \$2,000 to \$3,000 per claim. Our category limit follows the Army guidelines of \$500/claim for inexpensive jewelry (costing \$100 or less) and \$1,000 per claim for expensive jewelry (over \$100 per item). State also changed the rug category to \$1,000 per rug limiting the number of rugs to a reasonable number to have (say 5 or 6) depending on circumstances. Our guideline say \$3,000/claim.

Questionable Assumptions in the I.G. Study

Page 10 - "The majority of board members we talked with thought it was time to take a new bolder tack. The Agency they said, can no longer afford to neglect its own interests. Several members regarded a responsive claims system as an integral part of any overall Agency program to increase morale and to maintain a first-class overseas operational cadre. We agree."

OL Response

The Claims Act introduces significant constraints that limit Government liability in personal property losses. These constraints preclude total coverage; the intent of the law is not to provide insurance against loss, but to assume limited liability under specified conditions. The extent that the Government should be liable is controversial. In any event, the Claims Act is not designed by Congress to cover all losses, and to the extent that results do not meet expectations, there will be dissatisfaction.

The report implies that the existing system neglects Agency interest and decreases morale and contributes to a less than first class overseas cadre. It is not clear that by simply paying more through claims, the overseas cadre will have higher morale and be more professional or better motivated. If morale is down, such that operations are affected, then claims may be a contribution, but probably an insignificant one, and, because claims are constrained by law, other methods of compensation should be investigated.

Nuances, Complexities, and Problems

A consistent tenor of the report is that procedures and policies be codified to ensure consistency. The Chairman considers the Army material as overwhelming now, providing codification that exceeds similar specialities.

The major challenge is in trying to provide a fair and equitable settlement consistent to the unique circumstances and in accordance with the law, regulations and precedents. Considerations of the totality of the above introduces considerable complexity in the adjudication of some cases, particularly the precedent setting implication of deviating from standards. The I.G., in their recommendations, are not burdened with precedents, etc., but pride themselves in recommending that which they feel is most equitable for that particular case, regardless of the constraints caused by regulations, precedents, and other complexities. The divergence of board vs I.G. deliberations cause integration problems when appeals are successful, with the board being stuck with picking up the pieces,--which is a difficult task when the appeal violates regulations or precedents. The board has equality in all deliberations and needs the consistency of the guidelines now in use. The I.G. analyzes cases uniquely, usually with personnel inexperienced with claims, and unaware of the nuances and complications of precedents, or the impact of isolated recommendations.

By way of further example, the board is struggling with the concept of incident to service for TDY personnel (Page 12 of the I.G. report). Although general agreement exists, the complicated cases are considered on a case by case basis. Loss during supper at a late hour with no negligence involved is covered (with one dissenting note), and being robbed in a house of ill repute is not (unanimous). To try to codify the above in great detail is not thought productive; the board exists to evaluate each case against rather specific guidelines and regulations. There is flexibility; it is not thought judicious or helpful to have the board's decision second guessed, as page 14 of the I.G. study suggests:

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"We suggest that be expanded to list specific grounds for appeal and make clear that new evidence is not the only basis for reconsideration of a claim."

This statement implies that different people will look at the situation from a different viewpoint, and arrive at different conclusions.

Summary

Although there are not major disagreements with the I.G. study, we feel that some of the recommendations would not contribute to a more responsive or efficient claims adjudication process.

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Page 11.

I.G. Recommendation

- 25X1 - "We therefore suggest that the DDA task the HCRB to review [] and recommend appropriate revisions."

OL Reply:

25X1 [] references AR 27-20: The two are overwhelming, providing detailed operating policy.

I.G. Recommendation:

- "designate the board as the focal point for action on claims matters, with responsibility for reviewing and recommending policy changes, alerting senior management to existing or anticipated problems and advising senior management when an appellate ruling constitutes a change in policy. (This last point is discussed in more detail later in this chapter under the section entitled Appeal Process.) The board has shied away from doing so because it did not think it had the authority. Senior management, on the other hand, cannot resolve problems or questions of policy that are not brought to its attention."

OL Reply:

The Chairman always perceived the authority existed. More formal methods have been instituted for statistical analysis of trends and tracking of the Department of the Army and Department of State philosophies.

I.G. Recommendation:

- "-- determine if the DDCI rather than the DCI should be the final authority on claims grievance cases."

OL Reply:

25X1 In the past, either have reacted, i.e., DDCI for []

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I.G. Recommendation:

- "-- clarify as precisely as possible those terms used in claims work--incident to service, official duty, negligence, reasonable possession of property, and multiple claims--which are subject to varying interpretations."

OL Reply:

Done via [] Army literature and the training and associated data presented by the Claims Review Officer and Central Processing Branch.

I.G. Recommendation:

- "-- ensure that category limitations, the major element of a claims system, are realistic, in step with operational and organizational needs, and current. The claims review officer should advise the board when category limitations require change."

OL Reply:

The Army is assigned this responsibility by Congress. We track the Army, with exceptions. Although the board will be more active in the area, via statistical data and communication with State and Army, the amount for categories, and thus the definition of resonable, useful, and proper, is subjective, and the amount will never please everyone.

Page 13.

I.G. Recommendation:

- ". . .we suggest that the DCI establish a policy that will provide fair and reasonable reimbursement for employees who innocently suffer financial loss during TDY assignments."

OL Reply:

Policy for TDY personnel is now more liberal than for PCS personnel. What is fair and reasonable is

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subjective and controversial, with the controversy usually caused by the concept of contributory negligence and reasonable precautions. It is still not clear that the Government should be liable, say, for the theft of high value jewelry worn ostentatiously in a high crime area at night. The board considers its policy fair and reasonable and insists that each case be analyzed separately and deliberated on separately. However, DCI policy and direction are always welcome.

I.G. Recommendation:

- "We suggest that:

- the entire board, sitting as a group, review appeals dealing with claims under \$5,000.
- the DDA determine whether the board should continue to review appeals involving more than \$5,000, since all the members ruled on original claims in this category. The designation of one or two alternate board members whose duties would be limited to hearing appeals exceeding \$5,000 would provide the necessary "new blood" to defuse any charges of predisposition by the regular board members.
- a senior officer other than the DDA, possibly the DDCI, be named the reviewing authority on appeals involving more than \$5,000, since the DDA is the final authority on all original claims in this category."

OL Reply:

The board feels the existing system insures that different people, at a higher organizational level, react to appeals.

Page 14.

I.G. Recommendation:

- "We suggest that be expanded to list specific grounds for appeal and make clear that new evidence is not the only basis for reconsideration of a claim."

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OL Reply

This implies dual criteria and second guessing.

Page 15.

I.G. Recommendation:

- "We agree this request is reasonable and constructive. A representative of the Inspector General will meet with the board chairman to make the necessary arrangements."

OL Reply:

Excellent.

I.G. Recommendation:

- "We suggest that when the board believes a DCI or DDA reversal of its decision constitutes a policy change, it request a ruling from the DDA. If the DDA concurs, the regulation should be amended promptly."

OL Reply:

This has been the policy. To date, reversals have not led to a policy change.

Page 16.

I.G. Recommendation:

- "We agree and suggest that directorates select future board representatives against established criteria."

OL Reply:

Agree.

I.G. Recommendation:

- "We also suggest that the DDS&T and the D/NFAC broaden the scope of the board's experience by selecting HCRB representatives from senior officers of their own career services."

OL Reply:

Agree.

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Page 17.

I.G. Recommendation:

- "We suggest that the board as a group routinely review all claims that the chairman recommends be denied because they are not incident to service, there are indications of negligence, possession does not appear reasonable and proper, or they do not qualify for multiple claims."

OL Reply:

Disagree. Any controversial claim or claim with policy implications always has been automatically reviewed. This suggestion would bog the system down leading to long processing times and high overhead. The procedure is complicated enough and the queue is long enough already.

I.G. Recommendation:

- "We suggest that board procedures and policies be codified to ensure long-term consistency in claims adjudication."

OL Reply:

The Agency regulations, handbooks, and supplemental Army material go into great depths--there is great evidence that no one, including board members (with exceptions), reads or understands that which is available.

Page 18.

I.G. Recommendation:

- "We suggest that the HCRB and component chiefs of support meet twice a year for discussion and exchange of views on claims matters. We also suggest that when the board plans to reject a claim, it discuss the issues with the component support officer before making its final decision."

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OL Reply:

Agree. However, the claim is written up in great detail and the package given to the support officer now. Further, claims are covered during the Office of Logistics quarterly meetings, and the door is always open. Seems to be an overkill.

I.G. Recommendation:

- "We suggest that the HCRB submit an annual report to the DDA at the end of each fiscal year."

OL Reply:

Agree; however, we are overworked now, with processing queues. The data is time consuming to extract and present. Therefore, it should be used for a purpose by senior management to preclude yet more reports that are not contributing to decision-making, i.e., who is going to use the data and for what reason?

Page 19.

I.G. Recommendation:

- "We believe the board should investigate this possibility, since the current checklist detailing steps involved in preparing a claim apparently is not doing the job in many instances."

OL Reply:

We distribute a standard form, but will accept anything that includes the necessary data.

I.G. Recommendation:

- "We suggest that the DDA establish a program to ensure that support personnel are adequately trained to assist overseas personnel in the preparation and submission of claims. We also suggest making the logistics office of every component the focal point for claims training."

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OL Reply:

Agree - we have expanded our training program and have revised a publication on claims that is targeted to each employee.

Page 20.

I.G. Recommendation:

- "The board chairman has tasked the claims review officer with drafting a handbook.

OL Reply:

Correct.

I.G. Recommendation:

- "The chairman agrees a field notice system is logical and practical and has tasked the claims review officer with preparing notices independently or when so instructed by the board."

OL Reply:

Correct.

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